

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

TL-N-2510-99

JForsberg

date: October 19, 1999

to: Chief, Examination Division, North Central District  
Attn: [REDACTED], Group Manager, Group [REDACTED]

from: District Counsel, North Central Region

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subject: [REDACTED]  
Sequa Interest Claim

This is in response to your request for advice as to the dates from which interest accrues on the deficiencies assessed for [REDACTED]'s taxable years [REDACTED], [REDACTED], and [REDACTED]. As previously indicated, we are of the opinion that any putative refund of deficiency interest for [REDACTED] is barred by the statute of limitations. Accordingly, this memorandum only addresses the refunds claimed for [REDACTED] and [REDACTED].

Issue

Under the facts set forth below, from what dates does interest accrue on the deficiencies assessed for [REDACTED] taxable years [REDACTED] and [REDACTED].

Conclusion

Where a taxpayer has reported an overpayment on its return for year 1 and has elected to have the overpayment applied to its estimated taxes for year 2, to the extent the deficiency is less than or equal to the amount of the overpayment, interest does not accrue on the deficiency until the overpayment has been reduced below the amount of the deficiency by having been applied to year 2's estimated taxes, or, to the extent the overpayment is not fully used to satisfy year 2 estimated taxes, until the original due date of the year 2 return.

In the present case, no part of either overpayment was required to satisfy subsequent years' estimated tax liabilities. Accordingly, no interest accrues on the deficiencies for [REDACTED] or [REDACTED] until [REDACTED], and [REDACTED], respectively, the original due dates of the subsequent years' returns.

Facts

██████████ (the "taxpayer") has a taxable year ending May 31. Pursuant to extension, the taxpayer's ██████ return was timely filed on or about ██████. The ██████ return showed a tax liability of \$██████████, and an overpayment of \$██████████ which the taxpayer elected to apply to its ██████ estimated tax liability. The taxpayer did not designate the quarterly estimated tax payment to which the overpayment was to be applied. Accordingly, the overpayment was applied to the first quarterly estimated tax payment for ██████ pursuant to Rev. Ruling 88-98.

The taxpayer made the following quarterly estimated tax payments for ██████:

<u>Installment Period</u>	<u>Estimated Tax Due<sup>1</sup></u>	<u>Estimated Tax Payment</u>	<u>Overpayment/ (Underpayment)</u>
██████████	\$ ██████████	\$ ██████████	\$ ██████████
██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████
	\$ ██████████	\$ ██████████	\$ ██████████

Pursuant to extension, the taxpayer's ██████ return was timely filed on or about ██████. The ██████ return showed a tax liability of \$██████████, and an overpayment of \$██████████ which the taxpayer elected to apply to its ██████ estimated tax liability. The taxpayer did not designate the quarterly estimated tax payment to which the overpayment was to be applied. Accordingly, the overpayment was applied to the first quarterly estimated tax payment for ██████ pursuant to Rev. Ruling 88-98.

The taxpayer made the following quarterly estimated tax payments for ██████:

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<sup>1</sup> The quarterly estimated tax payments due are per the taxpayer's protective claim dated ██████. We have not verified the correctness of the taxpayer's estimated tax computation.

<u>Installment Period</u>	<u>Estimated Tax Due<sup>2</sup></u>	<u>Estimated Tax Payment</u>	<u>Overpayment/ (Underpayment)</u>
██████████	\$ ██████████	\$ ██████████	\$ ██████████
██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████
██████████	\$ ██████████	\$ ██████████	\$ ██████████

The taxpayer's ██████████ and ██████████ returns were subsequently examined and deficiencies in tax were assessed for those years in the amounts of \$ ██████████ and \$ ██████████, respectively, on ██████████, and ██████████, respectively. In computing the amount of interest due on the deficiencies for ██████████ and ██████████, the service used the due dates of the taxpayer's first estimated quarterly tax payments for the subsequent year as the dates on which interest began to accrue on the deficiencies.

On or about ██████████, the taxpayer filed protective claims for deficiency interest for ██████████ and ██████████. Based on the May Department Stores and Sequa Corporation cases, the taxpayer's claims took the position that no interest should accrue on the deficiencies until the due date of subsequent years' returns (██████████). Subsequently, presumably in an attempt to comply with May Department Stores case, the overpayments for ██████████ and ██████████ were applied to the subsequent year's third quarterly estimated tax payments.

### Discussion

In May Department Stores Co. v. United States, 36 Fed. Cl. 680 (1996), 1996-2 U.S.T.C. ¶ 50,596, acq. 1997-2 C.B. 1, the taxpayer elected to credit an overpayment shown on its 1983 return to its 1984 estimated tax liability but failed to designate the quarterly payment to which the overpayment was to be credited. The Service subsequently determined a deficiency for 1983 and assessed interest on the deficiency from the due date of the first installment for 1984 in accordance with Rev. Rul. 88-98. The taxpayer, however, had made estimated tax

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<sup>2</sup> The quarterly estimated tax payments due are per the taxpayer's protective claim dated ██████████. We have not verified the correctness of the taxpayer's estimated tax computation.

payments for the first and second quarters of 1984 sufficient to avoid the addition to tax imposed by section 6655. The Court of Federal Claims held that the Government had had the use of taxpayer's overpayment from the due date of the first installment to the date taxpayer filed its 1983 tax return since the overpayment was not needed to satisfy either the first or second estimated tax payments.

In light of May Department Stores, the Service has modified the manner in which it will compute interest on a deficiency for a year where the taxpayer elected to apply an overpayment shown on that year's return to the succeeding year's estimated taxes. Rev. Rul. 99-40, 1999-40 IRB 1 (September 16, 1999) provides that in such a case, the overpayment will be applied to the unpaid installments of estimated tax due on or after the date the overpayment arose in the order in which they are needed to avoid the imposition of an addition to tax for failure to pay estimated income tax under sections 6654 and 6655. Interest on the subsequently determined deficiency will then accrue from the date, and to the extent, the unapplied overpayment is no longer adequate to satisfy the deficiency. In determining when an overpayment is to be applied to estimated tax installment, any excess payments made for prior installments are to be taken into account.

Rev. Rul. 99-40 does not address the issue of when interest begins to accrue on a deficiency where all or part of the overpayment is not needed to satisfy the succeeding year's estimated tax liability. It is the Service's position that in such a case, the overpayment should be treated as a payment of the succeeding year's income tax. Section 6513(d) provides:

If any overpayment of income tax is, in accordance with I.R.C. § 6402(b), claimed as a credit against estimated tax for the succeeding tax year, such amount shall be considered as a payment of the income tax for the succeeding taxable year (whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year in which the overpayment arises.


Under sections 6513(a) and 6151, the due date of the succeeding year's return is the last date on which an overpayment could be credited as a payment of the succeeding year's tax. Further, this is also the date the overpayment is treated as a payment for purposes of computing interest on any overpayment of income taxes with respect to the succeeding year under sections 6611(a) and (d). Accordingly, the statute requires that an overpayment which

the taxpayer elects to credit against the succeeding year's estimated tax must be treated as a payment against the succeeding year's tax liability no later than the due date of the succeeding year's return.

In the present case, the taxpayer's quarterly estimated tax payments for each of the years [REDACTED] and [REDACTED] were sufficient to satisfy its estimated tax liabilities for those years and therefore there was no need to apply any part of either the [REDACTED] or [REDACTED] overpayment to such estimated tax liabilities. As the overpayments for [REDACTED] and [REDACTED] exceeded the amounts of the deficiencies for those years, and as no part of those deficiencies was required to be applied against subsequent years' estimated tax, no interest accrues on the deficiencies for [REDACTED] or [REDACTED] until [REDACTED], and [REDACTED], respectively, the original due dates of the subsequent years' returns.

If you have any questions respecting this matter, please call Jack Forsberg at (651) 290-3473, ext. 227.

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By:   
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cc: Assistant Chief Counsel  
(Field Service)